

Exhibit H

1 MATTHEW W. CLOSE (Bar No. 188570)
2 mclose@omm.com
3 DIMITRI D. PORTNOI (Bar No. 282871)
4 dportnoi@omm.com
5 O'MELVENY & MYERS LLP
6 400 South Hope Street
7 Los Angeles, CA 90071-2899
8 Telephone: (213) 430-6000
9 Facsimile: (213) 430-6407
10 RICHARD H. CLOSE (Bar No. 50298)
11 rclose@gilchristrutter.com
12 THOMAS W. CASPARIAN (Bar No. 169763)
13 tcasparian@gilchristrutter.com
14 YEN N. HOPE (Bar No. 233880)
15 yhope@gilchristrutter.com
16 GILCHRIST & RUTTER
17 Professional Corporation
18 1299 Ocean Avenue, Suite 900
19 Santa Monica, California 90401-1000
20 Telephone: (310) 393-4000
21 Facsimile: (310) 394-4700
22 Attorneys for Plaintiff Colony Cove
23 Properties, LLC

16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA**

18
19 COLONY COVE PROPERTIES, LLC,
20 a Delaware limited liability company,

21 Plaintiff,

22 v.

23 CITY OF CARSON, a municipal
24 corporation; CITY OF CARSON
25 MOBILEHOME PARK RENTAL
26 REVIEW BOARD, a public
administrative body; and DOES 1 to 10,
inclusive,

27 Defendants.

Case No. CV 14-03242 PSG (PJWx)

28
**PLAINTIFF'S REVISED
DISPUTED JURY INSTRUCTIONS
AND VERDICT FORM (CLEAN
SET)**

Judge: Hon. Philip S. Gutierrez
Courtroom: 880
Trial Date: April 28, 2016

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1 **COURT'S INSTRUCTION NO. 2**

2 **Claims and Defenses**

3 To help you follow the evidence, I will give you a brief summary of the
4 positions of the parties:

5
6 Plaintiff Colony Cove Properties, LLC has one claim against Defendants
7 City of Carson and City of Carson Mobilehome Park Rental Review Board.
8 Plaintiff alleges that Defendants effected a taking of Plaintiff's property without
9 just compensation in violation of the Fifth Amendment to the United States
10 Constitution and 42 U.S.C. § 1983. Plaintiff claims that Defendants abruptly
11 changed their rent-control rules and deviated from pre-existing practices
12 immediately after Plaintiff purchased its mobilehome park. Plaintiff claims that it
13 reasonably expected that it would be able to obtain rent increases sufficient to
14 generate income to maintain and operate its mobilehome park, including the
15 payment of interest on its mortgage from General Electric Capital Corporation.
16 Plaintiffs claim that Defendants' change to the rules and practices forced Plaintiff to
17 operate the mobilehome park at a multi-million-dollar loss for multiple years, and
18 above all, interfered with what was a reasonable and distinct investment-backed
19 expectation. Plaintiff has the burden of proving this claim.

20
21 Defendants deny this claim.

1 **COURT'S INSTRUCTION NO. 3**

2 **Burden of Proof—Preponderance**

3 When a party has the burden of proof on any claim by a preponderance of the
4 evidence, it means you must be persuaded by the evidence that the claim is more
5 probably true than not true.

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7 You should base your decision on all of the evidence, regardless of which
8 party presented it.

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1 **COURT'S INSTRUCTION NO. 14**
2 **Judicial Notice**

3 The court has decided to accept as proved the fact of the historical
4 performance of the S&P 500 stock market index from December 1, 2000, through
5 December 1, 2014, attached hereto as Exhibit A, even though no evidence has been
6 introduced on the subject. You must accept this fact as true.

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1 **COURT'S INSTRUCTION NO. 20**
2 **Adverse Inference**

3 If a party fails to produce for deposition a person who has knowledge about
4 facts in issue, and who is reasonably available to the party, and who is not equally
5 available to the other party, after being properly served with a deposition notice,
6 then you may infer that the testimony of that person is unfavorable to the party who
7 could have produced the witness but did not.

8
9 Plaintiff properly served on Defendants a notice of deposition of Jim Dear,
10 who was the City of Carson's Mayor at the time of the rent applications at issue in
11 this case and who was the City Clerk for Carson when Plaintiff served its
12 deposition notice. Defendants were under a duty to produce Mr. Dear for
13 deposition because, at the time, Mr. Dear was an employee of the City. Defendants
14 failed to produce Mr. Dear for deposition.

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1 **COURT'S INSTRUCTION NO. 21**

2 **Section 1983 Claim—Introductory Instruction**

3 The plaintiff brings its claim under the federal statute, 42 U.S.C. § 1983,
4 which provides that any person or persons who, under color of law, deprives
5 another of any rights, privileges, or immunities secured by the Constitution or laws
6 of the United States shall be liable to the injured party.

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1 **COURT'S INSTRUCTION NO. 22**

2 **Section 1983 Claim Against Local Governing Body Defendants Based on**
3 **Official Policy—Elements and Burden of Proof**

4 In order to prevail on its § 1983 claim against Defendants alleging liability
5 based on an official policy, Plaintiff must prove each of the following elements by a
6 preponderance of the evidence:

7 1. Defendants acted under color of law;

8 2. The acts of Defendants deprived Plaintiff of its particular rights under
9 the United States Constitution; and

10 3. Defendants acted pursuant to an expressly adopted official policy.

11 A person acts “under color of law” when the person acts or purports to act in
12 the performance of official duties under any state, county, or municipal law,
13 ordinance, or regulation. The parties have stipulated that Defendants acted under
14 color of law.

15 “Official policy” means a rule or regulation promulgated, adopted, or ratified
16 by Defendants City of Carson and City of Carson Mobilehome Park Rental Review
17 Board. The parties have stipulated that Defendants acted pursuant to an expressly
18 adopted official policy.

19
20 If you find that Plaintiff has proved each of these elements, and if you find
21 that Plaintiff has proved all the elements it is required to prove under Court's
22 Instruction No. 23, your verdict should be for Plaintiff. If, on the other hand,
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1 Plaintiff has failed to prove any one or more of these elements, your verdict should
2 be for Defendants.

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1 **COURT'S INSTRUCTION NO. 23**

2 ***Penn Central Regulatory Takings Claim Under 42 U.S.C. § 1983***

3 In general, the government must compensate the owner of private property
4 when it requires a person or persons alone to bear public burdens which, in all
5 fairness, should be borne by the public as a whole. Whether a particular
6 governmental restriction on the use of property requires compensation by the
7 government depends largely upon the particular circumstances of the case.

8

9 Under the Fifth Amendment, when the government takes a landowner's
10 property, even if for a public purpose, the government is required to pay the
11 landowner just compensation. To prove Defendants effected a taking without just
12 compensation in violation of the Fifth Amendment, Plaintiff must establish by a
13 preponderance of the evidence that justice and fairness require that the economic
14 injuries caused by Defendants be compensated by the government, rather than
15 remain concentrated on the Plaintiff.

16

17 In determining whether the government effected a taking in this case,
18 consider and balance all the circumstances in the case, including:

19

20 1. the character and extent of economic impact of Defendants' action on
21 Plaintiff at the time of the Defendants' action;

22

23 2. the extent and severity of the interference with Plaintiff's reasonable,
24 investment-backed expectations;

1 3. the character of the governmental action, and specifically if it forces
2 some people alone to bear public burdens which, in all fairness and justice, should
3 be borne by the public as a whole;

4

5 4. the government interests served by Defendants' actions, and whether
6 the regulation is reasonably necessary to the effectuation of a substantial public
7 purpose;

8

9 5. the allocation of the burden among all taxpayers, i.e., whether a
10 landowner has been singled out; and

11

12 6. whether Defendants' actions were politically motivated.

13

14 You may consider the actual, investment-backed expectations of the Plaintiff
15 only to the extent they are "objectively reasonable" under all of the circumstances.
16 In other words, you must judge the reasonableness of the Plaintiff's expectations
17 from the perspective of a reasonable investor in the Plaintiff's position at the time
18 of the investment and not with the 20/20 vision of hindsight.

19

20 No single factor is controlling and Plaintiff does not need to establish each of
21 these factors to prevail. These are the relevant factors and circumstances that you
22 should consider when deciding if Plaintiff has established by a preponderance of
23 the evidence that a taking occurred.

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1 **COURT'S INSTRUCTION NO. 25**
2 **Prejudgment Interest**

3 In a takings case, the defendants are obligated to pay prejudgment interest as
4 part of the constitutionally required just compensation. Given the delay in time
5 between the taking and the payment of compensation following trial, prejudgment
6 interest is a measure that serves to compensate for the loss of use of money due as
7 damages from the time the claim accrues until judgment is entered, thereby
8 achieving full compensation for the injury those damages are intended to redress.

9
10 To determine the appropriate rate of prejudgment interest when payment of
11 just compensation is delayed, you must examine what a reasonably prudent person
12 investing funds so as to produce a reasonable return while maintaining safety of
13 principal would receive. You should apply an interest rate based on evidence of the
14 rate that would be generated by investment in a diverse group of securities,
15 including treasury bills.

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VERDICT FORM

We, the jury empanelled in this case, answer the questions submitted to us as follows:

Regulatory Takings Claim

6 1. Did Defendants City of Carson's and City of Carson Mobilehome Park
7 Rental Review Board's (collectively, "Defendants") decisions with respect to
8 Plaintiff Colony Cove Properties, LLC's ("Plaintiff") rent-increase application
9 submitted in September 2007 ("Year 1") and/or its rent-increase application
10 submitted in September 2008 ("Year 2") constitute a regulatory taking without just
11 compensation in violation of the Fifth Amendment to the United States
12 Constitution?

Answer: YES NO

If your answer to Question 1 is YES, then answer Questions 2 and 3. If your answer to Question 1 is NO, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. What amount of just compensation, before prejudgment interest, is due Plaintiff as a result of Defendants' actions?

Answer: \$

3. What prejudgment interest rate is Plaintiff entitled to?

Answer: _____ %

1 (INSTRUCTION: You are now at the end of the verdict form. Please verify
2 that you have answered all of the questions. If so, please have the presiding
3 juror sign and date the verdict form and advise the [marshal] [bailiff] that you
have reached a verdict.)

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6 DATED this _____ day of _____, 2016.
7
8 _____
9 Presiding Juror
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1 Dated: April 28, 2016

2 Respectfully submitted,

3 GILCHRIST & RUTTER
4 Professional Corporation

5 &

6 O'MELVENY & MYERS LLP

7 By: /s/ Matthew W. Close
Matthew W. Close

8 Attorneys for Plaintiff
9 Colony Cove Properties, LLC

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